

In The  
Supreme Court of the United States  
October Term, 1989

THE STATES OF KANSAS AND MISSOURI,  
AS PARENS PATRIAE,

*Petitioners,*

vs.

THE KANSAS POWER & LIGHT COMPANY  
and  
UTILICORP UNITED, INC.,

*Respondents.*

On Writ Of Certiorari To The United States  
Court Of Appeals For The Tenth Circuit

JOINT APPENDIX

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**LIST OF RELEVANT DOCKET ENTRIES  
UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI**

**Case No. 85-2605-S**

<u>DATE</u>	<u>NR</u>	<u>PROCEEDINGS</u>
09/20/84	2	Complaint of the Gas Service Company (KPL)
04/12/85	60	Complaint of Intervening Plaintiff Missouri Public Service Company

**Case No. 85-2364-S**

07/10/85	1	Complaint of Plaintiff The State of Kansas
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**Case No. 86-2351-S**

08/08/86	1	Complaint of Plaintiff The State of Missouri
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**Case No. 85-2349-S and Consolidated Cases**

06/27/85	1	COMPLAINT
02/07/86	85	Stipulation for dismissal without prejudice of all claims of Intervening Pltff. Missouri Public Service Company.
06/19/87	290	Motion of UtiliCorp United, Inc. to intervene as Pltff.
06/22/87	292	SECOND AMENDED COMPLAINT Re: 85-2438-S
06/22/87	294	THIRD AMENDED COMPLAINT of the Kansas Power and Light Company



07/31/87	318	ANSWER of Cities Service Oil and Gas Corp. and CSG Exploration Co. to second amended complaint of Kansas Gas and Electric Co.
07/31/87	319	ANSWER of Cities Service Oil and Gas Corp. and CSG Exploration Co. to third amended complaint of the Kansas Power and Light Co. (Re: 85-2605-S)
07/31/87	320	ANSWER of Deft. Williams Natural Gas Co. to the second amended complaint of Pltf. Kansas Gas and Electric Company
07/31/87	321	ANSWER of Deft. Williams Natural Gas Co. to the third amended complaint of Pltf. The Kansas Power and Light Company
07/31/87	322	ANSWER of Amoco and affirmative defenses to second amended complaint of Kansas Gas & Electric Co.
07/31/87	323	ANSWER of Amoco and affirmative defenses to the third amended complaint of Kansas Power and Light Company (Re: 85-2438)
08/18/87	332	MEMORANDUM AND ORDER ENTERED DES: UtiliCorp's motion to intervene is granted
09/04/87	344	FIRST AMENDED COMPLAINT Re: 85-2349-S
09/04/87	345	FIRST AMENDED COMPLAINT Re: 85-2364-S
09/04/87	346	FIRST AMENDED COMPLAINT Re: 85-2511-S
09/09/87	348	SECOND AMENDED COMPLAINT of State of Missouri

09/22/87	355	ANSWER of Deft. Williams Natural Gas Co. to the second amended complaint of Pltf. State of Missouri
09/23/87	356	ANSWER of Defts. Cities Service Oil and Gas Corp. and CSG Exploration Co. to second amended complaint of the State of Missouri
09/25/87	357	ANSWER and affirmative defenses of Amoco Production Co. to the State of Missouri's second amended complaint
09/30/87	361	ANSWER AND CROSS-CLAIM of deft. Williams Natural Gas Company to the First Amended Complaint of the State of Kansas Ex Rel. Robert T. Stephan
09/30/87	362	ANSWER, COUNTERCLAIM AND CROSS-CLAIM of deft. Williams Natural Gas Company to the First Amended Complaint of Farmland Industries
09/30/87	363	ANSWER and CROSS-CLAIM OF DEFT. Williams Natural Gas Company to the First amended Complaint of The State of Kansas as Parens Patriae
10/02/87	367	ANSWER of Cities Service Oil and Gas Corp. and CSG Exploration Co. to First Amended Complaint of Farmland Industries, Inc.
10/02/87	368	ANSWER of Cities Service Oil and Gas Corp. and CSG Exploration Co. to First Amended Complaint of State of Kansas

10/02/87	369	ANSWER of Cities Service Oil and Gas Corporation and CSG Exploration Co. to First Amended Complaint of the State of Kansas, as Parens Patriae on behalf of natural persons residing in Kansas
10/08/87	371	ANSWER of Cities Service Oil and Gas Corp. and CSG Exploration Co. to cross-claim of Williams Natural Gas Company
10/08/87	372	ANSWER and affirmative defenses of Amoco Prod. Company to the first amended complaint of the State of Kansas, as parens patriae, on behalf of natural persons residing in Kansas
10/08/87	373	ANSWER and affirmative defenses of Amoco Prod. Company to the first amended complaint of Farmland Industries, Inc.
10/08/87	374	ANSWER and affirmative defenses of Amoco Prod. Company to the first amended complaint of the State of Kansas Ex Rel. Robert T. Stephan
10/09/87	375	MEMORANDUM AND ORDER ENTERED DES: Motion of UtiliCorp for reconsideration is denied. As a condition of intervention, UtiliCorp is to pay into the Clerk of the District Court the sum of \$14,000.00 to be deposited in an interest-bearing account pending the final outcome and any appeal of this litigation
10/14/87	378	COMPLAINT OF INTERVENING PLTF. UTILICORP UNITED, INC.
11/06/87	404	ANSWER of Cities Service Oil and Gas Corp. and CSG Exploration Co.

		to complaint of UtiliCorp United Inc.
11/09/87	407	ANSWER of Deft. Williams Natural Gas Company to the complaint of intervening Pltf. UtiliCorp United, Inc.
11/16/87	410	ANSWER of Amoco Production Co. to complaint of intervening pltf. Utilicorp United, Inc.
12/23/87	439	UtiliCorp's statement of material facts which are not in dispute
12/23/87	440	MOTION of Intervening Pltf. UtiliCorp to strike certain of Defts' affirmative defenses or, alternatively, for partial S/J
01/06/88	448	MOTION of pltf. to strike, or for partial S/J
01/06/88	449	Memorandum in support of motion to strike or for partial S/J
01/26/88	458	MOTION OF KG&E to strike or in the alternative, for partial S/J
01/26/88	459	Memorandum of KG&E in support of motion to strike
01/26/88	460	KG&E's Statement of material facts which are not in dispute
02/29/88	474	Memorandum of Pltf. State of Kansas Opposing Motions of Pltfs. KP&L and UtiliCorp to Strike or For Partial Summary Judgment
03/09/88	485	Brief of Pltf. State of Missouri In Opposition to Motions of Pltfs. UtiliCorp United, Inc. and Kansas Power & Light Co. to Strike or In the Alternative for Summary Judgment

05/04/88 523 MEMORANDUM AND ORDER ENTERED DES: Pltfs. UtiliCorp, KG&E and KP&L's motion for partial S/J granted solely on the pass-on defense. Pltfs' motions to strike denied. The claims of the States of Kansas and Missouri as parens patriae for their citizens who purchased natural gas from a public utility dismissed for lack of standing w/Appendix

05/06/88 525 JUDGMENT ON DECISION BY THE COURT ENTERED BY THE CLERK: In accordance with the M&O filed 5/4/88 and EOC 5/5/88, The claim of State of Kansas as parens patriae for their citizens who purchased natural gas from a public utility is dismissed for lack of standing

05/16/88 528 JOINT MOTION of States of Missouri and Kansas to vacate and reconsider memo and order of 5/4/88 or, in the alternative to designate order as final under FRCP 54(b) or to certify as appealable under 28 USC Section 1292(b)

06/07/88 541 MEMORANDUM AND ORDER ENTERED DES: States of Kansas and Missouri's joint motion for certification pur. to 28 USC 1292 is granted. All other requested relief is denied

07/11/88 555 ORDER ENTERED TENTH CIRCUIT COURT OF APPEALS: The petitions of the States of Missouri and Kansas for permission to appeal are granted. The appeals are consolidated and assigned Misc. #'s

88-8042 - State of Kansas & 88-8043  
- State of Missouri.

**UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT**

<u>DATE</u>	<u>PROCEEDINGS</u>
08/17/88	Joint Appellants' Brief filed by States of Kansas and Missouri
08/17/88	Joint Addendum filed by Appellants
09/19/88	Appellee's Brief filed by Utilicorp United, Inc.
09/20/88	Appellee's Brief filed by Kansas Power & Light Company
09/20/88	Joint Addendum filed by Appellees
01/31/89	Tenth Circuit Opinion filed
2/14/89	Joint Petition for Rehearing filed by Appellants
03/27/89	Order Denying Rehearing

**UNITED STATES SUPREME COURT**

06/26/89	Petition for Writ of Certiorari filed by States of Kansas and Missouri
1/16/90	Order Granting Certiorari

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

IN RE WYOMING TIGHT ) Case No. 85-2349 and  
SANDS ANTITRUST CASES ) Consolidated Cases

MOTION TO STRIKE, OR, IN THE ALTERNATIVE,  
FOR PARTIAL SUMMARY JUDGMENT

Plaintiff, The Kansas Power and Light Company ("KPL"), moves the Court to strike as insufficient, pursuant to Fed. R. Civ. P. 12(f), or, alternatively pursuant to Fed. R. Civ. P. 56, for partial summary judgment on, defenses<sup>1</sup> raised to the antitrust claims of KPL's Third Amended Complaint. These defenses raise the standing and scope-of-injury issues commonly called the "pass-on" defense under Section 4 of the Clayton Act, 15 U.S.C. § 15. Defendants allege that KPL lacks standing or has not sustained injury under Section 4 because KPL, the direct purchaser of the illegally-priced gas at the center of this action, passes on most gas costs to its customers.

The United States Supreme Court and numerous Courts of Appeals have soundly rejected the pass-on defense. The reasoning underlying KPL's alternative

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<sup>1</sup> The challenged defenses are set out in Exhibit A to the supporting memorandum submitted herewith. They are: Fourth Defense, Answer of Cities Service Oil and Gas Corporation and CSG Exploration Company to KPL's Third Amended Complaint, at 22 (filed July 31, 1987); Seventh and Ninth Affirmative Defenses, Answer of Amoco Production Company to KPL's Third Amended Complaint, at 62 (filed July 31, 1987); and Fourth and Seventeenth Affirmative Defenses, Answer of Williams Natural Gas Company to KPL's Third Amended Complaint, at 23 and 25 (filed July 31, 1987).

motion to strike or for partial summary judgment is set forth in the accompanying supporting memorandum.

KPL submits that this issue is ripe for resolution pursuant to either Rule 12(f) or Rule 56. KPL's summary judgment motion is timely filed. While KPL's alternative 12(f) motion is not filed within twenty (20) days of defendants' answers to the Third Amended Complaint of KPL, the Court may strike an insufficient defense at any time, and thus may consider untimely motions to strike. KPL requests that the Court consider KPL's motion to strike together with that of co-plaintiff Utilicorp United, Inc., which timely filed its motion raising the same issue.

Respectfully submitted,

[Signatures Omitted in Printing]

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## EXHIBIT A

## DEFENDANTS' CHALLENGED DEFENSES

- I. *ANSWER OF CITIES SERVICE OIL AND GAS CORPORATION AND CSG EXPLORATION COMPANY TO KPL'S THIRD AMENDED COMPLAINT*, at 22 (filed July 31, 1987).

## Fourth Defense

Plaintiff lacks standing to sue under the antitrust laws and under the Racketeer Influenced and Corrupt Organizations Act.

- II. *ANSWER OF AMOCO PRODUCTION COMPANY TO KPL'S THIRD AMENDED COMPLAINT*, at 62 (filed July 31, 1987).

## Seventh Defense

The Third Amended Complaint is barred because plaintiff lacks standing to bring this action.

## Ninth Defense

The Third Amended Complaint is barred because plaintiff has not been injured in its business or property by reason of anything forbidden by the antitrust laws of the United States or the Racketeer Influenced and Corrupt Organizations Act.

- III. *ANSWER OF WILLIAMS NATURAL GAS COMPANY TO KPL'S THIRD AMENDED COMPLAINT*, at 23 and 25 (filed July 31, 1987).

## Fourth Affirmative Defense

For a Fourth Affirmative Defense, [WNG] alleges that plaintiff lacks standing to bring all or some of the claims in this action.

## Seventeenth Affirmative Defense

For a Seventeenth Affirmative Defense, [WNG] alleges that plaintiff has not been injured in its business or property by reason of anything forbidden in the antitrust laws of the United States or any state.

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

IN RE WYOMING TIGHT ) Case No. 85-2349 S and  
SANDS ANTITRUST CASES ) Consolidated Cases

KPL'S STATEMENT OF MATERIAL FACTS  
WHICH ARE NOT IN DISPUTE

1. At all times relevant to this action, plaintiff The Kansas Power and Light Company ("KPL") purchased and continues to purchase natural gas directly from Williams Natural Gas Company, (formerly Cities Service Gas Company and Northwest Central Pipeline Corporation; hereinafter "Pipeline").

2. KPL purchases natural gas directly from Pipeline for its own use and for re-sale to its residential, commercial and industrial customers. Pipeline sends invoices for these purchases to KPL and KPL pays for all such purchases directly to Pipeline.

3. KPL has not had, nor does it currently have, fixed quantity contracts with any of its residential, commercial or industrial customers.

4. Many of KPL's industrial customers can switch from KPL to alternative energy sources or curtail their natural gas usage if dissatisfied with the price, terms or conditions of service offered by KPL.

[Signatures and Certificate of  
Service Omitted in Printing]

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